

the thinking and the actions of a mentally ill person and when that person comes into contact with the criminal courts in a case involving homicide, their severe mental illness will affect their culpability. The question is how to figure out when the impact on the culpability of the defendant is such that the death penalty should not be considered and the top penalty should be life without possibility of parole.

In the mental retardation case, the Supreme Court said that people with mental retardation -- because of characteristics of their disability -- don't warrant the death penalty. That same inquiry with regard to people with severe mental illness produces the same results -- the understanding of their actions may be sufficient to allow conviction, but the mental illness has such an impact on their thoughts and action, they are not among the worst of the worst -- those people whose culpability is the highest.

Three doctrines exist that involve mental illness as it affects criminal cases:

- Competence to stand trial. Every state has the provision that mental illness can be so severe that they cannot understand their actions or assist counsel cannot be tried or convicted unless treatment will restore them to competence. This takes some people out of the criminal procedure.
- Insanity defense: A person who is competent to stand trial may be still be eligible for acquittal if their mental illness so impaired their understanding of the nature of their action that they cannot be convicted.
- Competence to be executed: Some people on death row who acquired mental illness while in prison may be so impaired they cannot understand what the punishment is all about. These people cannot be executed.

Even with these three doctrines, the bill before you is still necessary because there still may be people with severe mental illness sentenced to death despite the impact of their illness on their actions.

Under this legislation, a person with severe mental illness can still be punished; they can be punished severely. They cannot be sentenced to death; but, there is no impairment in the State's ability to protect the public. The only issues are culpability and retributive purposes for this person's actions.

In this country, we reserve the death penalty for those who most deserve it. The position of this legislation is that the death penalty is inappropriate for people with severe mental illness due to the impact of their mental illness on their ability to understand and conform their actions to the requirement of law.

While this bill tracks the mental retardation bill, it differs in some important respects. A person with mental retardation has had it from birth and it is life-long; it is not a changing condition. Mental illness often is a changing condition. This legislation addresses that by focusing on the person's mental condition at time at which the crime occurred.

Anyone whose actions may have been affected by the use of alcohol or drugs is excluded from this law as are those whose actions may be due directly to their mental illness such